

State of Minnesota
In Court of Appeals

THOMAS H. RAUENHORST,

Respondent,

vs.

NANCY M.G. RAUENHORST,

Appellant.

APPELLANT'S BRIEF AND APPENDIX

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF LEGAL ISSUES 1

STATEMENT OF THE CASE..... 2

STATEMENT OF FACTS..... 2

ARGUMENT..... 3

I. THE DISTRICT COURT ABUSED ITS DISCRETION BY MAKING CLEARLY ERRONEOUS FINDINGS REGARDING APPELLANT’S EMPLOYMENT IN THE WORK FORCE RESULTING IN A CONCLUSION THAT IS AGAINST LOGIC AND THE FACTS ON THE RECORD 4

II. THE DISTRICT COURT ABUSED ITS DISCRETION BY IMPUTING INCOME TO APPELLANT..... 6

III. THE DISTRICT COURT ABUSED ITS DISCRETION BY IMPUTING INCOME TO APPELLANT IN A MANNER THAT IS CLEARLY INCONSISTENT WITH THE FACTS OF RECORD 8

CONCLUSION 9

TABLE OF AUTHORITIES

Cases

Carrick v. Carrick, 560 N.W.2d 407, 410 (Minn.App. 1997) 7, 8

Gales v. Gales, 553 N.W.2d 416, 418 (1996) 3

Gessner v. Gessner, 487 N.W.2d 921, 923 (Minn.App.1992) 3

Hecker v. Hecker, 568 N.W.2d 705 (Minn. 1997) 5

Maurer v. Maurer, 607 N.W.2d 176, 180 (Minn.App.2000) 7

Rutten v. Rutten, 347 N.W.2d 47, 50 (Minn.1984) 4

Schallinger v. Schallinger, 699 N.W.2d 15 (Minn.App. 2005) 5

Toughill v. Toughill, 609 N.W.2d 634 (Minn.App. 2000) 6

Vangsness v. Vangsness, 607 N.W.2d 468, 472 (Minn.App.2000) 4

Statutes

Minn.Stat. § 518.131 8

STATEMENT OF LEGAL ISSUES

I. WHETHER THE COURT OF APPEALS SHOULD REVERSE THE DISTRICT COURT'S ORDER REGARDING SPOUSAL MAINTENANCE.

The district court held that Appellant did not establish a basis for an award of spousal maintenance.

STATEMENT OF THE CASE

This case originated in Ramsey County District Court. Referee MaryEllen McGinnis presided. This case is a spousal maintenance dispute between Appellant (and former wife) Nancy M. G. Rauenhorst and Respondent (and former husband) Thomas H. Rauenhorst.

The trial court entered Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree on September 2, 2005. (A1) The Judgment and Decree reserved the issue of spousal maintenance. (A23) The parties agreed to submit the issue of spousal maintenance to the trial court by written submissions, upon which on December 16, 2005, the trial court issued the Spousal Maintenance Findings of Fact, Conclusions of Law and Order. (A107) Thereafter, on January 4, 2006, the trial court issued its Amended Findings of Fact, Conclusions of Law, Order for Judgment and Judgment and Decree. (A115)

In its Spousal Maintenance Order and Amended Decree, the trial court denied Appellant's request for spousal maintenance. (A113, A143)

STATEMENT OF FACTS

On March 25, 1997, the parties were married. (A117) In April 2000, Appellant left the work force. (A109, A124) On February 4, 2003, the parties' two children, twin boys named Daniel and Justin, were born. (A117) On October 30, 2004, the parties separated, at which time Appellant had not been employed for approximately four and one-half years. (A107, A109, A117, A122, A124) In July 2005, Appellant obtained part-

time work. (A110, A125)

The parties stipulated to joint legal and physical custody of the children; to Respondent's payment of child support to Appellant in the amount of \$647 per month; and to Respondent's payment of all work-related child care costs through December 31, 2007. (A3, A4, A118, A119) Respondent's net monthly income is, by stipulation, \$6,230. (A4, A118) The parties reached the stipulation regarding child support by imputing income to Appellant in the amount of \$14.50 per hour. (A4, A118)

The district court found that Respondent has monthly living expenses of \$5,214 (A108, A122); and Appellant has monthly living expenses of \$3,218. (A111, A126)

With regard to spousal maintenance, the district court imputed income to Appellant in the amount of \$35,000 per year, in accord with Appellant's income at the time of her departure from full-time employment in April 2000. (A111, A125) The district court record includes a vocational evaluation that estimates Appellant's earning capacity at \$11.00 to \$14.00 per hour or, if Appellant were to work as a painter, \$14.00 to \$18.00 per hour. (A44)

This appeal followed. (A157)

ARGUMENT

The standard of review on appeal from a maintenance determination is whether the district court abused its discretion. *Gales v. Gales*, 553 N.W.2d 416, 418 (1996). The district court's findings of facts concerning maintenance are reviewed under a clearly erroneous standard of review. *Gessner v. Gessner*, 487 N.W.2d 921, 923 (Minn.App.1992). There must be a clearly erroneous conclusion that is against logic and

the facts on record before this court will find that the trial court abused its discretion. *Rutten v. Rutten*, 347 N.W.2d 47, 50 (Minn.1984). To determine whether findings are clearly erroneous, we view the record in the light most favorable to the district court's findings and defer to the district court's credibility determinations. *Vangsness v. Vangsness*, 607 N.W.2d 468, 472 (Minn.App.2000). The fact that the record might support findings other than those made by the district court does not, by itself, render the court's findings defective. *Id.* at 474.

I. THE DISTRICT COURT ABUSED ITS DISCRETION BY MAKING CLEARLY ERRONEOUS FINDINGS REGARDING APPELLANT'S EMPLOYMENT IN THE WORK FORCE RESULTING IN A CONCLUSION THAT IS AGAINST LOGIC AND THE FACTS ON THE RECORD.

The Amended Findings of Fact and the Spousal Maintenance Findings both contain the chronology of Appellant's employment, along with the statement that, with the exception of a three-month gap, Appellant was consistently employed full-time from 1989 through the present. (A108-09, A123-24) The aforementioned chronology of Appellant's employment shows a lapse of two (2) months in 1990, four (4) months in 1996, and more than five (5) years from April 2000 through July 2005. (A108-09, A123-24)

The Amended Findings of Fact and the Spousal Maintenance Findings both also contain the finding that Appellant was required to be out of the work force from the time of the twins' birth until after the parties' separation, a period of nearly two (2) years. (A110, A124-25) The chronology that includes a five-year lapse outside of the work

force, along with the statement that it was necessary for Appellant to be absent from the work force for nearly two years, is clearly at odds with the finding of a mere, three-month gap in employment.

In addition, the district court expressly mentioned Appellant's failure to "use the period of April 1, 2005 to August 31, 2005, to look for employment," while also stating that Appellant's current employment began in July 2005. (A110, A125) The district court places undue weight on the five-month period between April and August, a substantial portion during which Appellant was, in fact, employed.

In light of applicable case precedent from Minnesota's appellate courts, it is clear that the district court's error in those findings is material to the court's conclusion on the issue of spousal maintenance. That is, had the district court *correctly* set forth Appellant's absence from the work force, the district court's maintenance conclusion would *necessarily* be cast in a very different light, and the district court's decision would be different.

In *Hecker v. Hecker*, 568 N.W.2d 705 (Minn. 1997), the parties were married for approximately ten (10) years, and the maintenance obligee spouse (in her forties) was awarded permanent spousal maintenance after being absent from the work force for approximately eleven (11) years. In the instant case, the parties were married for eight (8) years, and Appellant was absent from the work force for more than half of the marriage.

In *Schallinger v. Schallinger*, 699 N.W.2d 15 (Minn.App. 2005), the Court of Appeals affirmed the denial of spousal maintenance to the wife

because she *remained* in the work force *throughout the marriage*, ... [and] had *maintained* sufficient education and training to enable her to find appropriate employment to become fully *self-supporting*. (Emphasis added.)

In the instant case, Appellant did not remain in the work force and did not maintain the ability to be self-supporting.

In *Toughill v. Toughill*, 609 N.W.2d 634 (Minn.App. 2000), in which the parties had been married for three (3) years, the Court of Appeals affirmed the award of spousal maintenance to the wife for a period exceeding four (4) years. The Court of Appeals observed:

There is no evidence that [the obligee spouse] intended to reduce her income for the purpose of obtaining maintenance. Rather, she continues in the same job that she held before the dissolution.

In the instant case, the parties were married more than twice as long as the parties in *Toughill*, and not only did Appellant lack the intent of reducing her income; in fact, Appellant *did not* reduce her income. Appellant obtained employment, and thereby *increased* her income.

Conclusion. The district court's order in this matter that provides for no spousal maintenance must be reversed due to inaccurate findings that result in illogical conclusions that are inconsistent with Minnesota law.

II. THE DISTRICT COURT ABUSED ITS DISCRETION BY IMPUTING INCOME TO APPELLANT.

In order to impute income to a party for the purpose of determining if maintenance is needed, the court must find that the party was voluntarily underemployed in bad faith.

Maurer v. Maurer, 607 N.W.2d 176, 180 (Minn.App.2000). In this matter, the district court found:

- a. Appellant earned \$35,000 per year until April 2000. (A109, A124)
- b. Appellant thereafter “voluntarily continued to remain out of the work force.” (A110, A124)
- c. The parties’ children were born on February 4, 2003. (A110, A124)
- d. The parties separated on October 30, 2004. (A110, A124)
- e. Appellant “was required to be out of the work force ... from the children’s birth ... to a time after the parties’ separation when [Appellant] could reasonably find employment.” (A110, A124-25)
- f. Appellant “did not use the period from April 1, 2005 to August 31, 2005, to look for employment.” (A110, A125)

While the district court did not expressly find that Appellant was (or is) underemployed in bad faith, the same can be inferred by the district court’s findings, and by the district court’s imputation of income to Appellant.

As a matter of law ... a court may not find bad faith underemployment where ... a homemaker has continued to work the same part-time hours at the time of dissolution as she did during the marriage, has been employed in the same type of position as she was during the marriage, and where there is no evidence of any intent to reduce income for the purposes of obtaining maintenance. *Carrick v. Carrick*, 560 N.W.d2d 407, 410 (Minn.App. 1997).

In *Carrick*, the Court of Appeals observed that the district court’s assessment that the obligee spouse was intentionally under-employed and fully capable of working full-time was punitive.

There is no authority for finding bad faith underemployment at the time of an initial award of maintenance merely because a potential obligee has not yet rehabilitated when the record indicates the obligee has continued in the same employment and there is no evidence of an intent to reduce income for the purposes of obtaining maintenance. *Id.* at 410-411.

In the instant case, Appellant was *unemployed* at the time of the parties' separation, and *rightfully so*, in accord with the district court's own findings. (A110, A124-25) Therefore, the fact that Appellant obtained part-time employment while the marriage dissolution was pending constitutes *good-faith* employment, not bad-faith *under-employment*.

Nor do we find persuasive the trial court's observation that [the obligee spouse] had received maintenance since the order for temporary relief issued ... and 'has not made any meaningful efforts to obtain full-time employment.' ... We are unaware of any authority requiring that a traditional homemaker/part-time employed spouse seeking maintenance must "rehabilitate" and find full-time employment during the period between the temporary order under Minn.Stat. § 518.131 and the decree of dissolution. *Id.* at 411.

In this case, the district court expressly observed that Appellant did not look for employment between April and August 2005. (A110, A125) Clearly, that observation impacted the district court's maintenance decision – in direct contravention of the *Carrick* case precedent – and is improper.

Conclusion. Appellant is not under-employed in bad faith; therefore, the imputation of income to Appellant is improper and should be reversed.

III. THE DISTRICT COURT ABUSED ITS DISCRETION BY IMPUTING INCOME TO APPELLANT IN A MANNER THAT IS CLEARLY INCONSISTENT WITH THE FACTS OF RECORD.

The district court imputed income to Appellant in the amount of \$35,000 per year, which translates to \$673 per week, and \$16.83 per hour. (A111, A125) The district court quoted the conclusions of the vocational evaluation of Appellant as providing for work in an office setting paying \$11.00 to \$14.00 per hour, or as a painter earning \$14.00 to \$18.00 per hour. (A111, A125) However, the supplemental facts in the vocational report show that most of the existing painter positions required a minimum of three to six years of interior and/or exterior painting experience. (A55) One position requiring a minimum of two years of painting experience has a starting wage range of \$14.00 to \$18.00 per hour, depending on qualifications. (A55) While the vocational report refers to two years of experience that Appellant has dating back to the period between 1990 and 1992 (A41), it is logical to assume that if Appellant were, in fact, hired into the position, that she would command a salary at the low end of the wage range; i.e., approximately \$14 per hour. Indeed, the parties' stipulation regarding child support estimated Appellant's income at \$14.50 per hour. (A4, A118) The district court's use of income figures equal to \$16.83 per hour has no support in the record.

Conclusion. The district court's imputation of income to Appellant is not only directly contrary to law, but directly contrary to the facts on record. The district court's denial of an award of spousal maintenance to Appellant must be reversed.

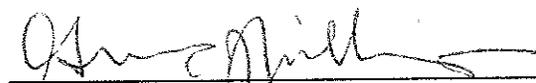
CONCLUSION

The district court abused its discretion by refusing to award spousal maintenance to Appellant. The district court's findings are clearly erroneous, and the imputation of

income to Appellant is contrary to the facts on record and contrary to law. The district court's order awarding no spousal maintenance to Appellant must be reversed.

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Dated: 3-29-06



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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).